IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN

TUESDAY, THE 6TH FEBRUARY 2007 / 17TH MAGHA 1928

WP(C).No. 28724 of 2006(T)

PETITIONER:

DEVASSY, S/O.VAREETH,
THEKKINIYIL HOUSE, MANALY ROAD, NEAR ST.THOMAS TILES, ALAGAPPANAGAR (PO), KORATTY, THRISSUR DISTRICT.

BY ADV. SRI.C.K.ABDUL RAHIM

RESPONDENTS:
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1. THE STATE OF KERALA, REP. BY ITS SECRETARY TO GOVERNMENT, REVENUE DEPARTMENT, GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM.

2. THE DISTRICT COLLECTOR, THRISSUR.

3. THE SPECIAL TAHSILDAR, LAND ACQUISITION (GENERAL), THRISSUR-20.

BY GOVERNMENT PLEADER SRI.L.G.SURESH BABU

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 06/02/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC NO.28724/2006

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1: COPY OF THE REPRESENTATION SUBMITTED BY THE PETITIONER TO THE 3RD RESPONDENT DATED 9.8.2002.

EXT.P2: COPY OF THE NOTICE OF AWARD ISSUED TO THE PETITIONER DATED 23.9.2002. B 188/02.

EXT.P3: COPY OF THE REPORT OF THE 3RD RESPONDNET SUBMITTED TO THE 2ND RESPONDENT DATED 26.6.2006 B 188/02.

EXT.P4: COPY OF THE APPLICATION SUBMITTED BY THE NEIGHBOURING LAND OWNERS BEFORE THE 2ND RESPONDENT DATED 18.7.2006.

EXT.P5: COPY OF THE LETTER ISSUED BY THE 3RD RESPONDENT TO THE 2ND RESPONDENT, DATED 26.7.2006 B 188/02.

EXT.P6: COPY OF PROCEEDINGS ISSUED BY THE 2ND RESPONDENT DATED 4.8.2006 KDS 25921/06/E5.

//TRUE COPY//

P.A. TO JUDGE

P.R.RAMAN, J.

W.P.(C) NO. 28724 OF 2006

Dated this the 6th day of February, 2007

J U D G M E N T

An extent of 0.0235 Hectors (2.35 Ares) of land belonging to the petitioner in Sy.No.51/2-6 of Muringur Thekkemuri Village in Mukundapuram Taluk was acquired under the Land Acquisition Act by the State for public purpose namely for the formation of an approach road to Railway overbridge at Koratty. Though this land form part of the large extent of 8.25 cents and the petitioner wanted the entire land to be acquired, the same was not accepted. However, in respect of the land acquired and taken possession of, an award was eventually passed. It is the case of the petitioner that the award amount was received by him under protest and two other neighbouring properties were also acquired and the awarded amount was received by them on the same day. On the same day, reference application was also filed separately by all the parties. Though the reference application claiming enhancement submitted by the neighbours were referred to the Civil court, the petitioner's application was not considered. Petitioner later came to know of this and submitted a

representation before the Tahsildar concerned. He also produced affidavits by the other two neighbours to support his case that reference application was actually filed by him also. The Tahsildar by Ext.P5 before whom the reference application was filed, after considering the affidavit came to the conclusion that the reference application submitted by the petitioner though not seen in the file, is a case of misplacement and opined that his request should also be referred for enhancement to the said court and sought approval from the District Collector. Exhibit P5 is the report submitted by the Tahsildar in this regard dated 26.7.06. Exhibit P5 reads thus:

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2. The District Collector by Exhibit P6 accorded approval for referring the matter to the Sub court, Exhibit P6 is dated

14.8.06. It reads as follows:

But still nothing was done in the matter. Hence this writ petition is filed.

3. In the counter affidavit filed for and on behalf of the respondents, they have taken the stand that the reference said to be filed by the petitioner is not seen in the file. There is no dispute that said application is not seen in the file. So the question is as to whether it was actually filed by the petitioner and subsequently misplaced by the office. The primary authority before whom the application is filed has already submitted report Exhibit P5 seeking approval from the higher authorities to refer the matter accepting the affidavit filed by the neighbouring owners. The District Collector has also accorded approval accepting the report.

4. In such circumstances, it cannot now be contended that the application is not in file, so no reference could be made.

Present stand in the counter is nothing but a change of opinion. The authority concerned have by Exhibits P5 and P6 considered the matter along with the attendant circumstances and having been satisfied about the same, the respondents are bound to refer the claim of the petitioner also to the Civil Court. There is no question of going back on the decisions already taken as per Exhibits P5 and P6. Further the counter affidavit also appears to be filed totally misconceived of the legal position where it is said, the reference of the enhancement claim amounts to contempt of court. I do not wish to say anything further. But the counter affidavit filed is only to be ignored and based on Exhibits P5 and P6, there will be a direction to the Tahsildar, the 3rd respondent herein to refer the matter to the concerned Land Acquisition Court forthwith.

Petitioner shall produce copy of this judgment before the 3rd respondent for information and compliance.

Writ petition is disposed of as above.

P.R.RAMAN, JUDGE

Rp